



STATE OF MONTANA PURCHASE ORDER

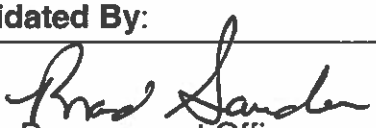
Date: March 31, 2009	P.O. Number: 2286
P.O. Title: Nimbus Server Monitoring	
Requisition Number: COR2009-08	IFB/RFP Number: Sole Source

BILL TO/SHIP TO INFORMATION

Bill To: Jon Straughn Department of Corrections Health, Planning, and Information Services 1539 11 th Avenue Helena, MT 59620	Ship To: Jon Straughn Department of Corrections Health, Planning, and Information Services 1539 11th Avenue Helena, MT 59620
Agency Contact: All questions regarding this purchase, including billing questions , should be directed to: Gary Willems at (406) 4941.	Delivery: 30 days ARO

VENDOR INFORMATION

Vendor: Nimsoft, Inc. 275 Shoreline Drive Suite 350 Redwood City, CA 94065	Vendor Phone: (650) 931-1151
	Vendor Fax: (650) 240-3569
	Vendor E-mail: mark.webster@nimsoft.com
Vendor Contact: Mark Webster	Vendor Number:

P.O. Total: \$41,478.00	P.O. Terms: NET 30 DAYS
Contract Validated By:	
 Brad Sanders, Procurement Officer	Date: March 31, 2009
IMPORTANT: SEE STANDARD TERMS AND CONDITIONS	

Standard Terms and Conditions

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

AUTHORITY: The attached bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related

accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/procurement/preferences.asp>.

REDUCTION OF FUNDING: The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or

country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Section 18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired. Exceptions will be rejected.

Revised 2/09

Nimbus Server Monitoring

Licensed Product Description	Price Per Unit	Quantity	Extended Price
Base Infrastructure NimBUS Base Pack-Entry Edition Core NimBUS Components-Required Probes Included: NimBUS Manager, Hubs, Alarm Servers (nas), Enterprise Console, Service Level Manager, report_engine, data_engine, email gateway, SDP, 1 Basic Server Pack	10,000	1	10,000.00
Server Monitoring Basic Server Pack Server monitoring of core system level metrics. Specific for file and print servers, ESX servers, Netware servers, AS400 and all utility server types. Probes Included: cdm, fsmounts, processes, ntsservices, printers, ntevl, ntperf, dirscan, reboot, logmon, nexec, net_traffic, vmware, rsp, netware, jobs, systat, fetchmsg, dirscan, logmon, jobqs, jobsched	750.00	35	26,250.00
Application Server Pack Agent based application server monitoring, Specific for Oracle, DB2, Sybase, Informix, Weblogic, Websphere, Notes, Citrix and Cisco UCM/VoIP Servers. Probes Included: cdm, fsmounts, processes, neservices, printers, ntevl, ntperf, dirscan, reboot, logmon, nexec, net_traffic, vmware, rsp, netware, jobs, systat, fetchmsg, dirscan, logmon, jobqs, job sched, sqlserver, adevl, AD Server, ad_response, IIS, exchange_monitor, Exchange Backend Reports, exchange_response, oracle, oracle_logmon, DB2, Sybase, Informix, WebLogic, Websphere, easerver, ccm_monitor, cisco_unity, cisco_ucm, notes_server, notes_response, ica_server, ica_response, apache, tomcat, sql_response, jboss and mysql	1,500.00	11	16,500.00
NimBUS Response Time Monitoring Response Time Monitoring Pack-Advanced Advanced availability and response time monitoring of web based and client server applications. Includes the use of customizable synthetic transactions that will truly verify end to end service assurance. Price per location/perspective. Probes Included: e2e_appmon_dev, e2e_appmon	3,000.00	1	3,000.00
Subtotal			55,750.00
Software Discount	38%		(21,185.00)
Total this section			34,565.00
Product Description			Price
Annual Software Maintenance Fees Software Maintenance Fees: 20% of List Software 12 months of software maintenance from date of invoice. Includes Technical Support, Software Upgrades, access to Customer Support Portal, and Personal Technical Account Manager.			11,150.00
Subtotal			11,150.00
Software Maintenance Fee Discount			(4237.00)
Total this Section			6913.00
Purchase Order Total			41,478.00

Notes

Prices per quote dated 3/27/2009

License term is perpetual.

Future annual maintenance shall equal 20% of purchase price.

Payments to: Nimsoft, Inc., 275 Shoreline Drive, Suite 350, Redwood City, CA 94065, USA